

(14)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 1039. 104

MARY SUE MAGRUDER, *Petitioner*,

v.

CHRISTINE MAGRUDER, HARRY F. MAGRUDER, ALICE E. MOSE,
ET AL., *Respondents*.

BRIEF OF RESPONDENTS.

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**BRIEF IN OPPOSITION TO PETITION FOR WRIT OF
CERTIORARI.**

The respondents respectfully submit that the Court of Appeals did not err in its construction of District of Columbia Code (1940), Sections 16-1301, 16-1302, and 16-1305.

STATEMENT OF CASE.

The respondents sued below for partition and sale of the indivisible real estate involved, naming the widow entitled to dower therein as party defendant. She answered, admitting all material facts, but declined to consent to a partition and sale. The respondents moved for judgment on the pleadings; that dower be assigned; and for partition and sale as prayed in the complaint. The defendant widow

moved for judgment and assignment of dower. The trial court assigned dower as of "one-third of the net rents, issues and profits of said real estate," but denied partition and sale.

ARGUMENT.

The Maryland statutes referred to by the petitioner are not similar, either in wording or effect, to the relevant portion of the sections of the District of Columbia Code construed herein.

It is apparent, from a comparison of the language of the Maryland statutes cited by the petitioner with the relevant provisions of the District of Columbia Code (1940), that the two differ in some important respects. Particularly, insofar as this case is concerned, the Maryland statutes contain no provision for the assignment of dower in indivisible real estate, as provided by sections 16-1302 and 16-1305, of the District of Columbia Code (1940), whereunder dower may be assigned by the Court in such case, "as of a one-third part of the net rents, issues and profits thereof." Hence the intolerable situation which occurred in the case of *Stein v. Stein*, 80 Md. 306, 30 Atl. 703. By the enactment of the provisions above referred to, Congress has removed the likelihood of such an obstacle arising in this District to defeat its plain purpose to achieve a comprehensive plan for partition and sale of property held in common.

The decision of the Maryland courts since Feb. 27, 1801, were not controlling upon the Court of Appeals.

The District of Columbia Code (1940), Sections 16-1301, 16-1302, and 16-1305, were derived from the Maryland Acts of Assembly, as follows: Act of January 20, 1787, Chapter 45, Section 8; Act of 1794, Chapter 60, Section 8; and Act of 1799, Chapter 49, Sections 5 and 6; (see 2 Kilty's

Laws of Maryland), which, by the Organic Act of February 27, 1801 (2 Stat. 103) became the law of the District of Columbia. By the Act of March 3, 1901 (31 Stat. 1202, Chapter 854, Sections 93, 86, and 89, these laws were enacted by Congress in substance (but supplemented also in the important particular hereinabove noted) and were integrated in their present form into the Code of the District of Columbia. Therefore, the construction placed upon the statutes of Maryland since the Act of Congress of February 27, 1801, cannot control as to the effect of the District of Columbia Code provisions here involved.

Morris v. United States, 174 U. S. 196, 19 S. Ct. 649, 43 U. S. (L. Ed.) 946.

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Stutzman v. Wallace, 142 U. S. 293, 12 S. Ct. 227, 35 U. S. (L. Ed.) 1018.

Camp v. Gress, 250 U. S. 308, 39 S. Ct. 478, 63 U. S. (L. Ed.) 997.

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B. & O. R. R. Co. v. Thomas, 37 App. D. C. 255.

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Mead v. Phillips, 77 U. S. App. D. C. 365, 135 F. 2d 819, 825.

The decision in *Stein v. Stein* (Supra) was confined to the narrow limits of the Maryland statute, and has no applicability here. While the case of *Phelps v. Stewart*, 17 Md. 231, is not in point upon the facts, it supports the opinion of the Court of Appeals, and holds merely that the assignment of dower is a condition precedent to partition and sale, in agreement with the case of *Hasler v. Williams*, 34 App. D. C. 319. And to like effect is the case of *Shipley v. Mercantile Trust Co.*, 102 Md. 649, 62 Atl. 814, also cited by the petitioner. In the case at bar, the condition precedent has been fulfilled, and dower has been assigned, as requested by all parties, including the widow, but the petitioner would deny to the respondents the remedies there-

upon available to them under Sections 16-1301 of the District of Columbia Code, and the common law in force in the District of Columbia.

The Court of Appeals has properly applied the common law in aid of the statutes involved.

In addition to the cases cited in the opinion of the Court of Appeals herein, the respondents respectfully refer to the cases of *Beavers v. Smith*, 11 Ala. 20; *Harrison's Ex'rs v. Payne*, 32 Grat (Va.) 387; and *Alexander's Ex'rs v. Bradley*, 3 Bush (Ky.) 667, as setting forth the common law principles applicable to the facts in the case at bar.

The statutes construed here have no general importance and are applicable only to the territory of the District of Columbia, and the decision of the Court of Appeals has no controlling effect elsewhere.

CONCLUSION.

The petition for certiorari should be denied.

Respectfully submitted,

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